



UTAH DEPARTMENT OF WORKFORCE SERVICES

Key Points:

- Employment Advisory Council to discuss at 12/20/2006 meeting.
- Requested to clarify intent of S.B. 5 of the 2004 General Session that modified the unemployment fraud penalty and overpayment calculation provision.

Senate Sponsor:

Senator Dan R. Eastman

Co-sponsor:

House Sponsor:

Co-sponsor:

BILL #:

TITLE: INELIGIBILITY FOR UNEMPLOYMENT
COMPENSATION BENEFITS

SUMMARY:

Section 35A-4-405

- This change is required to clarify that Unemployment Insurance claimants who fraudulently obtain unemployment benefits will continue to be disqualified from receiving future benefits for 13 to 49 weeks.
- The bill clarifies that a claimant who does not report or under reports weekly work and/or earnings, while receiving unemployment benefits for the same week, does not lose eligibility for benefits for that week because of the misreporting if the claimant would have been eligible for benefits had the information been reported correctly.
 - The claimant is required to re-pay the fraud overpayment and penalty amounts and
 - Complete the disqualification period before becoming eligible for potential future unemployment benefits.

For more information contact:

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Revised: 12/14/2006

1 **INELIGIBILITY FOR UNEMPLOYMENT**
2 **COMPENSATION BENEFITS**

3 2007 GENERAL SESSION

4 STATE OF UTAH

5
6 **LONG TITLE**

7 **General Description:**

8 This bill clarifies the disqualification provisions of the Employment Security Act
9 related to an individual's unreported or under reported work or earnings, or both, in
10 situations where the individual would have been eligible for benefits had the
11 information been correctly reported.

12 **Highlighted Provisions:**

13 This bill:

14 ☐ provides that a claimant for unemployment benefits who does not report or under
15 reports work or earnings, or both, for a particular week does not lose eligibility
16 for that week because of the misreporting if the claimant would have been eligible
17 for benefits had the information been reported correctly; and

18 ☐ provides that a claimant who does not report or under reports work or earnings, or
19 both, is subject to disqualification of benefits for subsequent weeks.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **35A-4-405**, as last amended by Chapter 7, Laws of Utah 2004

27
28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **35A-4-405**

30 is amended to read:

31 **35A-4-405. Ineligibility for benefits.**

32 Except as otherwise provided in Subsection (5), an individual is ineligible for benefits
33 or for purposes of establishing a waiting period:

34 (1) (a) For the week in which the claimant left work voluntarily without good cause, if
35 so found by the division, and for each week thereafter until the claimant has performed
36 services in bona fide, covered employment and earned wages for those services equal to at
37 least six times the claimant's weekly benefit amount.

38 (b) A claimant may not be denied eligibility for benefits if the claimant leaves work
39 under circumstances where it would be contrary to equity and good conscience to impose a
40 disqualification.

41 (c) Using available information from employers and the claimant, the division shall
42 consider for the purposes of this chapter the reasonableness of the claimant's actions, and the
43 extent to which the actions evidence a genuine continuing attachment to the labor market in
44 reaching a determination of whether the ineligibility of a claimant is contrary to equity and
45 good conscience.

46 (d) Notwithstanding any other subsection of this section, a claimant who has left work
47 voluntarily to accompany, follow, or join the claimant's spouse to or in a new locality does so
48 without good cause for purposes of Subsection (1).

49 (2) (a) For the week in which the claimant was discharged for just cause or for an act
50 or omission in connection with employment, not constituting a crime, which is deliberate,
51 willful, or wanton and adverse to the employer's rightful interest, if so found by the division,
52 and thereafter until the claimant has earned an amount equal to at least six times the claimant's
53 weekly benefit amount in bona fide covered employment.

54 (b) For the week in which the claimant was discharged for dishonesty constituting a
55 crime or any felony or class A misdemeanor in connection with the claimant's work as shown
56 by the facts, together with the claimant's admission, or as shown by the claimant's conviction
57 of that crime in a court of competent jurisdiction and for the 51 next following weeks.

58 (c) Wage credits shall be deleted from the claimant's base period, and are not available
59 for this or any subsequent claim for benefits.

60 (3) (a) (i) If the division finds that the claimant has failed without good cause to
61 properly apply for available suitable work, to accept a referral to suitable work offered by the
62 employment office, or to accept suitable work offered by an employer or the employment
63 office.

64 (ii) The ineligibility continues until the claimant has performed services in bona fide
65 covered employment and earned wages for the services in an amount equal to at least six times
66 the claimant's weekly benefit amount.

67 (b) (i) A claimant may not be denied eligibility for benefits for failure to apply, accept
68 referral, or accept available suitable work under circumstances where it would be contrary to
69 equity and good conscience to impose a disqualification.

70 (ii) The division shall consider the purposes of this chapter, the reasonableness of the
71 claimant's actions, and the extent to which the actions evidence a genuine continuing
72 attachment to the labor market in reaching a determination of whether the ineligibility of a
73 claimant is contrary to equity and good conscience.

74 (c) In determining whether work is suitable for an individual, the division shall
75 consider the:

76 (i) degree of risk involved to his health, safety, and morals;

77 (ii) individual's physical fitness and prior training;

78 (iii) individual's prior earnings and experience;

79 (iv) individual's length of unemployment;

80 (v) prospects for securing local work in his customary occupation;

- (vi) wages for similar work in the locality; and
- (vii) distance of the available work from his residence.

(d) Prior earnings shall be considered on the basis of all four quarters used in establishing eligibility and not just the earnings from the most recent employer. The division shall be more prone to find work as suitable the longer the claimant has been unemployed and the less likely the prospects are to secure local work in his customary occupation.

(e) Notwithstanding any other provision of this chapter, no work is suitable, and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(i) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(iii) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) For any week in which the division finds that the claimant's unemployment is due to a stoppage of work that exists because of a strike involving the claimant's grade, class, or group of workers at the factory or establishment at which the claimant is or was last employed.

(a) If the division finds that a strike has been fomented by a worker of any employer, none of the workers of the grade, class, or group of workers of the individual who is found to be a party to the plan, or agreement to foment a strike, shall be eligible for benefits. However, if the division finds that the strike is caused by the failure or refusal of any employer to conform to any law of the state or of the United States pertaining to hours, wages, or other conditions of work, the strike may not render the workers ineligible for benefits.

(b) If the division finds that the employer, the employer's agent or representative has conspired, planned, or agreed with any of the employer's workers, their agents or representatives to foment a strike, that strike may not render the workers ineligible for benefits.

(c) A worker may receive benefits if, subsequent to the worker's unemployment because of a strike as defined in this Subsection (4), the worker has obtained employment and has been paid wages of not less than the amount specified in Subsection 35A-4-401(4) and has worked as specified in Subsection 35A-4-403(1)(f). During the existence of the stoppage of work due to this strike the wages of the worker used for the determination of his benefit rights may not include any wages the worker earned from the employer involved in the strike.

(5) (a) For each week with respect to which the claimant willfully made a false statement or representation or knowingly failed to report a material fact to obtain any benefit under the provisions of this chapter, and an additional 13 weeks for the first week the statement or representation was made or fact withheld and six weeks for each week thereafter; the additional weeks not to exceed 49 weeks.

(b) The additional period shall commence on the Sunday following the issuance of a determination finding the claimant in violation of this Subsection (5).

(c) (i) Each claimant found in violation of this Subsection (5) shall repay to the division the overpayment and, as a civil penalty, an amount equal to the overpayment.

(ii) The overpayment is the amount of benefits the claimant received by direct reason of fraud.

(iii) The penalty amount shall be regarded as any other penalty under this chapter.

(iv) These amounts shall be collectible by civil action or warrant in the manner provided in Subsections 35A-4-305(3) and (5).

(d) A claimant is ineligible for future benefits or waiting week credit, and any wage credits earned by the claimant shall be unavailable for purposes of paying benefits, if any amount owed under this Subsection (5) remains unpaid.

(e) Determinations under this Subsection (5) shall be appealable in the manner provided by this chapter for appeals from other benefit determinations.

(f) If the fraud determination is based solely on unreported or under reported work or earnings, or both, and the claimant would have been eligible for benefits if the work or earnings, or both, had been correctly reported, the individual does not lose eligibility for that week because of the misreporting but is liable for the overpayment and subject to the penalties in Subsection (5)(c) and the disqualification periods for future weeks in Subsection (5)(a).

(6) For any week with respect to which or a part of which the claimant has received or is seeking unemployment benefits under an unemployment compensation law of another state or the United States. If the appropriate agency of the other state or of the United States finally determines that the claimant is not entitled to those unemployment benefits, this disqualification does not apply.

(7) (a) For any week with respect to which the claimant is receiving, has received, or is entitled to receive remuneration in the form of:

(i) wages in lieu of notice, or a dismissal or separation payment; or

(ii) accrued vacation or terminal leave payment.

(b) If the remuneration is less than the benefits that would otherwise be due, the claimant is entitled to receive for that week, if otherwise eligible, benefits reduced as provided in Subsection 35A-4-401(3).

(8) (a) For any week in which the individual's benefits are based on service for an educational institution in an instructional, research, or principal administrative capacity and that begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual performs services in the first of those academic years or terms and if there is a contract or reasonable assurance that the individual will perform services in that capacity for an educational institution in the second of the academic years or terms.

(b) (i) For any week in which the individual's benefits are based on service in any other capacity for an educational institution, and that week begins during a period between two successive academic years or terms if the individual performs those services in the first of the

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161 academic years or terms and there is a reasonable assurance that the individual will perform the
162 services in the second of the academic years or terms.

163 (ii) If compensation is denied to any individual under this Subsection (8) and the
164 individual was not offered an opportunity to perform the services for the educational institution
165 for the second of the academic years or terms, the individual shall be entitled to a retroactive
166 payment of compensation for each week for which the individual filed a timely claim for
167 compensation and for which compensation was denied solely by reason of this Subsection (8).

168 (c) With respect to any services described in Subsection (8)(a) or (b), compensation
169 payable on the basis of those services shall be denied to an individual for any week that
170 commences during an established and customary vacation period or holiday recess if the
171 individual performs the services in the period immediately before the vacation period or
172 holiday recess, and there is a reasonable assurance that the individual will perform the services
173 in the period immediately following the vacation period or holiday recess.

174 (d) (i) With respect to services described in Subsection (8)(a) or (b), compensation
175 payable on the basis of those services as provided in Subsection (8)(a), (b), or (c) shall be
176 denied to an individual who performed those services in an educational institution while in the
177 employ of an educational service agency.

178 (ii) For purposes of this Subsection (8)(d), "educational service agency" means a
179 governmental agency or entity established and operated exclusively for the purpose of
180 providing the services described in Subsection (8)(a) or (b) to an educational institution.

181 (e) Benefits based on service in employment, defined in Subsections 35A-4-204(2)(d)
182 and (e) are payable in the same amount, on the same terms and subject to the same conditions
183 as compensation payable on the basis of other service subject to this chapter.

184 (9) For any week that commences during the period between two successive sport
185 seasons or similar periods if the individual performed any services, substantially all of which
186 consists of participating in sports or athletic events or training or preparing to participate in the
187 first of those seasons or similar periods and there is a reasonable assurance that individual will
188 perform those services in the later of the seasons or similar periods.

189 (10) (a) For any week in which the benefits are based upon services performed by an
190 alien, unless the alien is an individual who has been lawfully admitted for permanent residence
191 at the time the services were performed, was lawfully present for purposes of performing the
192 services or, was permanently residing in the United States under color of law at the time the
193 services were performed, including an alien who is lawfully present in the United States as a
194 result of the application of Subsection 212(d)(5) of the Immigration and Nationality Act, 8
195 U.S.C. 1182(d)(5)(A).

196 (b) Any data or information required of individuals applying for benefits to determine
197 whether benefits are not payable to them because of their alien status shall be uniformly
198 required from all applicants for benefits.

199 (c) In the case of an individual whose application for benefits would otherwise be
200 approved, no determination that benefits to the individual are not payable because of his alien
201 status shall be made except upon a preponderance of the evidence.
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